

OFFICE OF THE WASHINGTON STATE LIQUOR CONTROL BOARD

April 24, 1996

The regular meeting of the Washington State Liquor Control Board was called to order at 9:30 a.m., Wednesday, April 24, 1996, in the Board Conference Room, fifth floor, Capital Plaza Building, Olympia, by Chairman Nate Ford. Board Members Jack Rabourn and Mary McKnew were present. Kim O'Neal, Assistant Attorney General, was also present. Sue Vanderburg was the recording secretary.

PUBLIC HEARING - PROPOSED AMENDMENTS TO WAC'S 314-20-100, 314-24-190 AND WAC 314-24-220. Chairman Ford announced this was the appointed time for a public hearing on the two proposed rule changes.

The Chairman stated that testimonies will be taken from the sign up sheet and the audience. He asked that testimonies be kept to the issue at hand and any redundant statements be kept to a minimum so that others who wish to testify may have time to do so.

Mr. Ford indicated that in accordance with the Administrative Procedures Act which requires the Board to respond to any offered options, the Board will not take formal action on the proposals until the next Board Meeting which is on Wednesday, May 1, 1996.

The Chairman stated the first proposal deals with WAC 314-20-100 and 314-24-190 which pertain to price postings the wholesalers are required to file with the Board. The proposal would allow wholesalers of beer and wine who service the islands of Orcas, Lopez and San Juan to post additional prices for sales in that locale. The only means of transportation to those locations are ferries or airplanes, and the wholesalers would like to include the cost of ferry tolls and travel time for deliveries to the islands.

Chairman Ford apologized for a mix-up with the name of the county involved. News Release #3-391 referred to Island County when it should have said San Juan County. News Release #4-102 correcting the error was subsequently issued. He said the Code Revisor's Office will be advised that the county mix-up was thoroughly discussed at this hearing which should mitigate the need to refile due to the error, provided there are no objections. Mr. Ford then called on Rich Raico, MIW Supervisor, to explain the proposal.

**PLAINTIFF'S
EXHIBIT**

CASE
NO. **CV04-0360P**

EXHIBIT
NO. **145**

WSA05559

TX145_001

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Mr. Raico explained that in December 1995, the Board was petitioned by four wholesalers in Whatcom County to amend WAC's 314-20-100 and 314-24-190. The amendment language would allow the second price posting by those four wholesalers to recoup their freight cost, because the only mode of transportation available to those locations is by ferry. He said the language is written in such a way that it would only allow the recouping of freight cost; no other cost would be added to the price of beer and wine.

Chairman Ford stated that some members of the Washington State Beer & Wine Wholesalers Association initiated the proposal, and asked its Executive Director, Phil Wayt, for comments. Phil Wayt stated the Association, which represents all the beer and wine distributors in the state, does not have a position on the proposal.

Ellis Tofte, proprietor of Sound Beverage, 1077 Highway 20, Mt. Vernon, stated his company services beer and wine products to San Juan Island and Skagit County. His company realizes that San Juan Islands are unique, and associated with that uniqueness are extraordinary transportation costs. Since the only mode of transportation available to the islands is ferry or airplane, they are asking the Board to add the following words to WAC 314-20-100 and WAC 314-24-190: "The beer wholesalers doing business in San Juan County may file additional price postings for that area. These postings may include additional costs such as ferry tolls and travel time over which the wholesaler has no control."

Dave Ashe, owner of Alpine Distributing, P. O. Box 277, Mt. Vernon, 98273, gave a report on the extraordinary transportation expenses associated with servicing accounts in San Juan County. He provided a ferry fee schedule which shows the costs involved for a round trip for a delivery truck. He also provided a summary of transportation costs for his company which shows the expenses for ferry and airplane for the year 1995. The total transportation costs amounted to \$12,856 of which \$7,570 was for ferry.

Steve Louia, co-owner of Skagit-Northwest Distributing, P. O. Box 446, Burlington, 98233, stated he supports the proposal. He said the involved wholesalers face special circumstances unlike the other wholesalers in the state. He said servicing accounts in San Juan County requires not only additional transportation costs, but substantially more overtime expenses stemming from the use of the ferry system. He described how a typical driver spends about 12 hours per trip servicing San Juan County accounts, 5 to 6 hours of which are spent either waiting for or being on

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the ferry. However, he said the only cost they are seeking to recoup is the transportation expenses. They are willing to bear the extra overtime expenses as a price for doing business in San Juan County. He said he is aware of the opposition to the proposal, but in order for them to continue to provide the same level of service to those accounts, they need this revenue.

Board Member Rabourn asked about the financial impact of the proposal. Mr. Louia replied that it would depend on the volume, but the preliminary figures indicate about 35 to 50 cents more for a case of beer and 65 to 75 cents more for a case of wine.

Peter Dow, owner of Cavatappi Distributing, 3120 NW 95th, Seattle, 98117, asked if the proposal is applicable only to wholesalers operating in Whatcom County. Mr. Raico replied the proposal would be applicable to any wholesaler who services San Juan County accounts, regardless of where the wholesaler is located. Mr. Dow stated the proposal seems to be discriminatory and asked if the delivery cost to places like Whidbey Island and Bainbridge Island can also be marked up. He said even though both islands are reachable by vehicle, the cost of driving from Seattle to all the way around those islands exceeds the cost of taking a ferry.

Chairman Ford asked if there are further testimonies or comments. There was none.

In reference to communications the Board has received on the proposal as of this morning, Mr. Ford reported that **in opposition of the proposal**, the Board has received 71 form letters (with different names and signatures); one letter from retailers containing six different names and signatures; one letter from a company that owns three supermarkets on San Juan Island; one letter from a retailer on Orcas Island; one letter from a retailer on San Juan Island; one letter from a retailer at Friday Harbor; and one letter from a retailer at Eastsound. **In support of the proposal**, the Board has received one petition signed by four distributors. And **a letter urging caution** in setting a precedent was received from Washington Food Industry. Chairman Ford stated that these and any additional correspondence the Board receives on the proposal will be made part of the official record.

Chairman Ford stated the second proposal deals with **WAC 314-24-220** which pertains to bonded wine warehouses and storage and removal of wine from such facilities. This subject had been previously presented to the Board Members two of whom are no longer on the Board. He said the

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proposal was initiated by the Washington Wine Institute and called on its Executive Director, Simon Siegl, to explain it.

Simon Siegl stated the proposal would allow Washington wineries that have wines stored in the bonded warehouse the ability to remove that wine and make a direct delivery to a retailer or a restaurant. It would also allow wine to be shifted into Tiger Mountain or any bonded wine warehouse on a tax paid basis pursuant to the federal provisions which allow those who produce under 100,000 gallons per year to be exempt from the federal tax increase that was passed in 1991. In other words, it would allow the wineries to store tax paid wine in the warehouse without having to pay the tax increase. In terms of removal, no more than 2,000 cases per year may be removed for the direct delivery, and the wineries that do so would keep records and provide those records to the Board.

Mr. Siegl stated the Washington Association of Beer and Wine Wholesalers and the Washington Wine Institute are in agreement with the final verbiage of the proposal. He said both organizations are very appreciative of the Board's patience with this matter.

In addition, Mr. Siegl took the opportunity to say farewell. At the end of June 1996, he is leaving for a new position in Washington D.C. He thanked the Board and the staff members with whom he enjoyed working over the past 11 years he represented the Washington Wine Institute.

On behalf of the Board, Chairman Ford congratulated Mr. Siegl on his new position, and asked if anyone has any questions of Mr. Siegl. There was none.

Phil Wayt, Executive Director, Washington Beer and Wine Wholesalers Association, stated his organization's concurrence of the proposal and pointed out that the first part of the proposal codifies the existing practice. He thanked the Board and its cooperation and patience.

Board Member Rabourn commended both organizations for their hard work in resolving this issue.

Lyn Tangen, owner of Cannery Winery, North 905 Washington, Spokane, 99201, and also the President of the Washington Wine Institute, said the Institute members are very supportive of the proposal and appreciative of all the hard work everyone has put in to get to this point.

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Chairman Ford asked if there are further testimonies or comments. There was none. Mr. Ford concluded the public hearing scheduled for today. He stated anyone who wishes to stay for the regularly scheduled Board meeting is welcome to do so.

MEETING RECESSED. The meeting was recessed at 10:00 a.m. until the call of the Chair.

MEETING RECONVENED. The meeting was reconvened at 10:05 a.m. by Chairman Ford for the regularly scheduled Board meeting.

TEDE'S GROCERY. Tedla A. Dessalene and William Snell, Attorney representing Mr. Dessalene, addressed the Board regarding the appeal of the denial of a class EF license for Tede's Grocery.

Mr. Snell said his client has made every effort to provide all the requested information with regard to financial disclosure, but he believed there has been a communication problem, part of which is due to the unique circumstances of the case. The money used to purchase the grocery store came from an inheritance from Mr. Dessalene's grandfather in Ethiopia. The staff is concerned about whether the money was transferred to the United States legitimately and if any taxes are due on that money.

Mr. Dessalene relayed the following with the assistance of Mr. Snell. He said he was born in Ethiopia and came to the United States in 1985. That same year, his grandfather passed away and left him an inheritance. At that time, Ethiopia was under the communist regime and did not allow a transfer of more than \$50 out of the country. In addition, there was no official exchange rate between the two countries. Faced with that predicament, Mr. Dessalene turned to the Ethiopian community members in the United States who arranged an informal exchange of funds between their friends and relatives in Ethiopia and Mr. Dessalene. He obtained the money through this process which took six years.

In reference to the question of whether any tax is due on the inheritance, Mr. Dessalene said he contacted his accountant, H & R Block who, after reviewing translated documents related to the inheritance, advised him that there is no tax due on the money. Mr. Snell provided the Board with a copy of the letter from the accounting firm stating their findings.

Mr. Dessalene said the beer and wine sale is critical to

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the economic viability of his grocery store and asked the Board for reconsideration.

Chairman Ford asked if the money exchange system Mr. Dessalene used was a common practice under the communist regime? Mr. Snell said his understanding from the Ethiopian community is that such a practice was very common, given the political atmosphere of that time period.

Board Member Rabourn indicated that while he has never met Mr. Dessalene before today, he has several friends in the Ethiopian community who have told him of the volatile political atmosphere of the time period in question.

The Chairman thanked Mr. Dessalene and Mr. Snell for the information. The Board will consider all the information and issue a decision in the near future.

APPROVAL OF MINUTES. Chairman Ford called for approval of the Board meeting minutes for April 3, April 9, April 10 and April 17, 1996 which the Board Members had reviewed.

Board Member McKnew moved approval of the above referenced Board Meeting minutes as written, Board Member Rabourn seconded the motion and it carried unanimously.

MERCHANDISING - LEASE EXTENSION, STORE NO. 032. ENUMCLAW. Mike Donaldson, Assistant Director, Merchandising, reported the lease on this store expired January 31, 1996 and was extended through March 31, 1996. The landlords have agreed to an additional 60 day extension at the same rate to allow time for continued negotiations for a long-term lease renewal. Mr. Donaldson recommended Board approval.

Board Member Rabourn moved approval of the recommendation, Board Member McKnew seconded the motion and it carried unanimously.

MERCHANDISING - LEASE EXTENSION, STORE NO. 090, PORT ORCHARD. Mike Donaldson, Assistant Director, Merchandising, reported the lease for this store expired October 31, 1995 and was extended through March 31, 1996. The landlords have agreed to an additional 60-day extension at the same rate while the staff continues to evaluate several lease proposals. Mr. Donaldson recommended Board approval.

Board Member McKnew moved approval of the recommendation, Board Member Rabourn seconded the motion and it carried unanimously.

MERCHANDISING - LEASE RENEWAL, STORE NO. 001, SEATTLE. Mike

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Donaldson, Assistant Director, Merchandising, reported the lease for this store expired on February 28, 1996 and was extended for 60 days. The landlord has proposed a five year lease renewal at \$23.25 per square foot, which is actually \$1.06 per square foot less than the current rate. Mr. Donaldson reported the downtown Seattle is in the midst of a building boom. The area is being served by five stores and their leases are in varying stages in terms of status. The rental rates are expected to soar and the availability of rental space is expected to become even more scarce in the area. Mr. Donaldson requested Board approval of the lease renewal for Store 001.

Board Member Rabourn moved approval of the request, Board Member McKnew seconded the motion and it carried unanimously.

MERCHANDISING - LEASE PROPOSAL, STORE NO. 007, YAKIMA (NORTH).

Mike Donaldson, Assistant Director, Merchandising, reported the lease for this store expired March 31, 1996 and has been on a month-to-month extension since that time. Neither the previous nor the current landlord has been very responsive to the Board's needs. In addition, the building next door to the liquor store is being used for a dance/entertainment center for all ages which does not create a comfortable situation for the Board.

The Board has received an appealing lease proposal from Gateway Center Associates for a space in the new Gateway Center. The center will enjoy excellent visibility and will be anchored by some major retail outlets. Further, it is located in an area that is projected to grow. Gateway Center Associates has proposed a 10-year lease for a 4,800 square foot space at the average rate of \$13.05 per square foot per year for the duration. Mr. Donaldson said the rent increase is offset by the excellent location and recommended Board approval.

Board Member McKnew moved approval of the recommendation, Board Member Rabourn seconded the motion and it carried unanimously.

ADMINISTRATIVE SERVICES - PRICE INCREASE ON DISTILLED SPIRITS.

Jim Hoing, Assistant Director, Administrative Services, reported the 1995 Legislature authorized the Board to secure a new Distribution Center and a Materials Handling System for \$30 million which are to be financed through the operating revenues of the Board. To fund the projects, Mr. Hoing recommended the Board increase the prices on distilled spirits 15 cents per equivalent 750 ml bottle effective July 1, 1996. Of the 15 cents, 12.5 cents would constitute a markup with the remainder covering the

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corresponding increased tax. He also recommended that the non-tax portion of the increased funds be earmarked to fund the new Distribution Center, and that it not be considered a part of excess funds to the Liquor Revolving Fund. With the increased price, Mr. Hoing estimated it would take between 11 and 12 years to pay for the new facility, depending on a number of factors.

Board Member Rabourn moved approval of the recommendations, Board Member McKnew seconded the motion. Discussion ensued and Board Member Rabourn clarified that the Board is not raising the tax; the 2.5 cent tax increase is a by-product of the 12.5 cent price increase. The motion was restated and carried unanimously.

ADMINISTRATIVE SERVICES - WINDOW CLEANING. Dan Threatt, Office Support Supervisor, Administrative Services, requested Board approval to expend \$1,195 to clean windows of Capital Plaza Building which is done twice per year. He said this amount represents the lowest bid received this year.

Board Member Rabourn indicated the Board may be moving out of the building in the near future and asked if this expenditure is wise. Mr. Threatt replied that he has no expectation of the Board moving anytime soon. Board Member McKnew indicated she will be meeting with the GA staff tomorrow to discuss this issue. Chairman Ford tabled this matter until further notice.

PURCHASING & DISTRIBUTION - REPLACEMENT AS/400 LINE PRINTER. Naomi Lieurance, Assistant Director, Purchasing & Distribution, requested Board approval to expend \$9,880 to replace two printers in the Distribution Center. Ms. Lieurance said Information Services recommends replacing the obsolete printers with the 1200 LPM printer from Decision Data.

Chairman Ford asked if this printer can be used with other systems the Board may use in the future. Curt Volland, Information Services Manager, said the usage is limited to IBM AS/400, but pointed out the Merchandising application will remain on AS/400 for quite some time.

Board Member McKnew moved approval of the request, Board Member Rabourn seconded the motion and it carried unanimously.

PURCHASING & DISTRIBUTION - CAPTAIN MORGAN RUM (HAT). Gary Thompson, Assistant Liquor Purchasing Agent, Purchasing & Distribution, recommended the Board approve the request from the supplier of Captain Morgan Gold Spiced Rum to

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offer an on-pack consisting of a baseball style hat attached to each 1.75 liter of Captain Morgan Gold Spiced Rum, and authorize them to ship 200 cases of the product.

Board Member McKnew moved approval of the recommendation and Board Member Rabourn seconded the motion. Discussion ensued and Chairman Ford explained that when this request was previously presented to the Board, he was concerned because the picture of the hat appeared as though it may appeal to youth. Since then, the Board Members have seen the actual product and found that the hat is of the style that appeals to somewhat older generation. The motion was restated and carried unanimously.

PURCHASING & DISTRIBUTION - CAPTAIN MORGAN SPICED RUM (MUG).

Gary Thompson, Assistant Liquor Purchasing Agent, Purchasing & Distribution, recommended the Board approve the request from the supplier of Captain Morgan Gold Spiced Rum to offer an on-pack consisting of a Captain Morgan acrylic mug plant packed with each 750 ml bottle, and authorize them to ship 300 cases of the product.

Board Member Rabourn moved approval of the recommendation, Board Member McKnew seconded the motion and it carried unanimously.

PURCHASING & DISTRIBUTION - MASTER OF MIXES.

Gary Thompson, Assistant Liquor Purchasing Agent, Purchasing & Distribution, recommended the Board approve the request from the supplier of Master of Mixes to list the six flavors in the 1.0 liter size. They are asking for this listing in place of the currently listed 750 ml size of these products. The other brand of mixers, Cuervo Mixers, is listed in the 1.0 liter size, and the supplier of Master of Mixes would like to be more competitive by offering the same size. Mr. Thompson indicated that this would result in about 10% per ounce savings for the consumers.

Board Member McKnew moved approval of the recommendation, Board Member Rabourn seconded the motion and it carried unanimously.

PURCHASING & DISTRIBUTION - WILD SPIRIT LIQUEUR.

Gary Thompson, Assistant Liquor Purchasing Agent, recommended the Board approve the request from the supplier of Wild Spirit Liqueur to reduce the proof of the product from 105 to 100. The supplier has made the corresponding reduction in price. Mr. Thompson indicated the 750 ml size of the product was listed in March 20, 1996 and the Board has yet to received the initial order.

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Board Member Rabourn moved approval of the recommendation, Board Member McKnew seconded the motion. Discussion ensued and the Chairman raised the issue of the intent behind the supplier's request for the proof reduction immediately after obtaining the listing for the 750 ml size. Mr. Thompson believed the situation resulted from delayed processing of paperwork and there was no intent to obtain a listing in one proof and immediately ask for a proof reduction. The motion was restated and carried unanimously.

PURCHASING & DISTRIBUTION - PROPOSED SALE OF CONFISCATED LIQUOR. Gary Thompson, Assistant Liquor Purchasing Agent, recommended the Board approve the sale of the 44 bottles of confiscated liquor through Store #122 in Tacoma at reduced retail prices. The liquor, acquired through various enforcement actions and no longer needed for evidence, is currently being held at the Tacoma Enforcement Office. The Enforcement staff has assured him the products are in marketable condition. Mr. Thompson said the Board has the option of destroying or selling the confiscated liquor. He said the Board's practice has been to affix a tag to the bottle identifying it as confiscated liquor.

Board Member Rabourn moved approval of the recommendation, Board Member McKnew seconded the motion. Discussion ensued and Mr. Thompson indicated the tag states the product is not under warranty and that he is uncertain of the legal ramifications of that statement. Assistant Attorney General Kim O'Neal said there is an implied warranty. However, she said there should be no problem as long as the Board is reasonably certain the products are in good condition. The motion was restated and carried unanimously.

PURCHASING & DISTRIBUTION - WINE LISTINGS. Gary Thompson, Assistant Liquor Purchasing Agent, recommended the Board approve the recommendations of the Wine Advisory Committee to list 10 of the 41 wines the committee tasted and evaluated. The committee suggests only the vintages specified be approved. The 10 wines are: Vendange Chardonnay 1994; Ste. Chapelle Johannisberg Riesling 1994; Beringer White Zinfandel; Ch. Ste. Michelle Grenache Rose 1995; Star Hill Pinot Noir 1991; Cypress Merlot 1994; Tulocay Cabernet Sauvignon 1992; Talus Cabernet Sauvignon 1993; Talus Zinfandel 1993; and Hoodsport Loganberry.

Board Member McKnew moved approval of the recommendation, Board Member Rabourn seconded the motion and it carried unanimously.

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PURCHASING & DISTRIBUTION - NEW LISTINGS/REJECTIONS. Gary Thompson, Assistant Liquor Purchasing Agent, recommended the Board approve the recommendations for listings and rejections as discussed at yesterday's meeting. He said the recommendations are based on presentations made by supplier representatives on March 20, 1996, discussion with the members of the listing committee and tasting reports on product samples and other factors. The recommendations consist of 16 listings, 13 rejections and one delisting.

Recommended to be listed as S are: Benriach Single Malt Scotch, 750 ml; Longmorn Single Malt Scotch, 750 ml; Strathisla Single Malt Scotch, 750 ml; Glenkeith Single Malt Scotch, 750 ml; Herradura Gold Tequila, 750 ml; and Brandy Peak Pear Brandy, 375 ml.

Recommended to be listed as L are: Bols Triple Sec, 750 ml; Bols Peppermint Schnapps, 750 ml; and C. C. Citrus Canadian Whisky, 750 ml.

Recommended to be listed as M are: Hussong's Tequila Rose Liqueur, 750 ml; Rohol Liqueur, 750 ml; Belvedere Vodka, 750 ml; Fris Vodka, 750 ml; Ice Box Butterball Liqueur, 750 ml; and Fire & Ice Cinnamon & Peppermint Schnapps, 750 ml.

Recommended to be listed as OTO is: Fris Vodka, 50 ml (200 cases).

Recommended to be rejected are: Bols Peach Schnapps, 750 ml; Bols Amaretto Liqueur, 750 ml; Bols Peach Brandy, 750 ml; Bols Blackberry Brandy, 750 ml; Bols Apricot Brandy, 750 ml; CEO 10 Year Canadian, 750 ml; Czarskaya Vodka, 750 ml; Herradura Anejo Tequila, 750 ml; Herradura Silver Tequila, 750 ml; Brandy Peak Marc Brandy Pinot Noir, 375 ml; Kranberi Vodka, 750 ml; Barton Long Island Iced Tea Cocktail, 750 ml; and C. C. Citrus Canadian Whisky, 1.75 L.

Recommended to be delisted is: Ice Box Margarita, 750 ml.

Board Member Rabourn moved approval of the recommendations, Board Member McKnew seconded the motion and it carried unanimously.

OTHER BUSINESS.

INTRODUCTION OF CATHIE LUCAS. Mike Donaldson, Assistant Director, Merchandising, introduced Cathie Lucas who recently started working as a Management Analyst for Merchandising. He said Ms. Lucas was previously employed

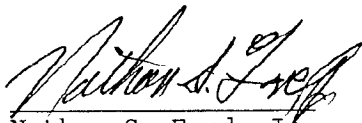
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with the Department of Retirement Systems. The Board welcomed her.

RULE MAKING FILING. Carter Mitchell, Public Information Officer/Legislative Liaison, requested Board authorization to proceed with the filing of the Preproposal Statement of Inquiry regarding the delegation of authority for the approval of certain license applications. RCW 66.24.010 provide the Board the option to designate a staff member(s), in writing, to approve unopposed license application under certain conditions. The Board has yet to establish the criteria under which the delegation can occur, however. Mr. Mitchell indicated that if the rule making processed commenced now, the earliest time the Board can delegate this authority will be August 1996.

Board Member McKnew moved approval of the request, Board Member Rabourn seconded the motion. Discussion ensued and the Chairman stated the Board should proceed with this, but the criteria should be conservative because the statutes specifically grant authority to the Board. He said there is sufficient time to discuss the concerns and formulate acceptable language. The motion was restated and carried unanimously.

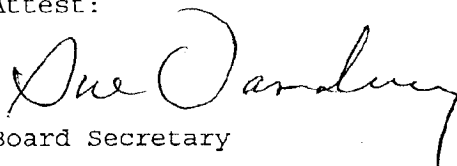
MEETING ADJOURNED. The meeting was adjourned at 11:00 a.m.


Nathan S. Ford, Jr.
Chairman

Jack Rabourn
Board Member


Mary E. McKnew
Board Member

Attest:


Sue Jamaley
Board Secretary